Filed 5/22/19 L.G. v. Hacienda La Puente Unified School Dist. CA2/7

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

L.G., a Minor, etc., Plaintiff and Appellant, v. HACIENDA LA PUENTE UNIFIED SCHOOL DISTRICT et al., Defendants and Respondents.	B286177 (Los Angeles County Super. Ct. No. BC610734)

APPEAL from a judgment of the Superior Court of Los Angeles County, Robert Broadbelt III, Judge. Affirmed.

Law Office of Martin N. Buchanan and Martin N. Buchanan; Girardi | Keese and John A. Girardi for Plaintiff and Appellant.

Declues Burkett & Thompson, Jeffrey A. Smith and Steven J. Lowery for Defendants and Respondents.

INTRODUCTION

L.G., a minor, by and through his guardian ad litem, appeals from the judgment entered in favor of Hacienda La Puente Unified School District and Rene Olague after the trial court granted their motion for summary judgment. The trial court ruled L.G. failed to file his personal injury action within the applicable statute of limitations under the Government Claims Act, Government Code section 810 et seq.[1] We affirm.

FACTUAL AND PROCEDURAL HISTORY

A. *L.G. Files an Administrative Claim, and the District Denies It*

On July 9, 2015 L.G., a member of his high school's varsity wrestling team, filed an administrative claim with the District under the Government Claims Act, section 905, alleging the negligence of Olague, who was his coach, and the District caused him to suffer a stroke and permanent neurological impairment. On August 13, 2015 the District rejected the claim. On August 14, 2015 Cedell Bush, a claims administrator for the District, wrote a letter to John A. Girardi, L.G.'s attorney, notifying him of the rejection and advising him that, under section 945.6, he had "only six (6) months from the date this notice was personally delivered or deposited in the mail to file a court action in the State of California on this claim." Bush served the notice by mail and enclosed a proof of service stating that on August 14, 2015 he placed the notice in an envelope addressed to Girardi "for collection and mailing."

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[1] Undesignated statutory references are to the Government Code.

B. *L.G. Files This Action*

On February 18, 2016 L.G. filed this action against the District and Olague. L.G. alleged that he had complied with the Government Claims Act by presenting a timely claim for damages and that, "[a]s of the date of filing of this complaint, [he] ha[d] not received notice of rejection." L.G. alleged his complaint was timely under section 945.6, subdivision (a)(2), which provides that a plaintiff has two years from accrual of the cause of action to file a civil action "if written notice of rejection of a claim is not given in accordance with . . . § 913."

C. *The District and Olague Move for Summary Judgment*

The District and Olague filed a motion for summary judgment, arguing that L.G. did not file his complaint "within the time permitted by . . . [section] 945.6" and that some of the causes of action stated in the complaint were "not fairly reflected" in L.G.'s administrative claim. In support of their motion, the District and Olague submitted a copy of the proof of service Bush signed and the notice of rejection he mailed. Bush stated in his proof of service that on August 14, 2015 he "served" the notice of rejection by "placing" the notice in a sealed envelope addressed to Girardi, with "postage . . . fully prepaid for collection and mailing." Bush also stated in the proof of service that he was "readily familiar with the regular mail collection and processing practices of the business," that the mail "would be deposited with the United States Postal Service that same day in the ordinary course of business," and that the envelope containing the notice of rejection "was sealed and deposited for collection and mailing on that date following ordinary business practices." Bush also submitted a declaration dated April 3, 2017 authenticating the August 2015 rejection notice and proof of service and stating that

on August 14, 2015 he "prepared and mailed a notice of rejection of the claim . . . along with a proof of service by mail." The District argued L.G.'s action was untimely because under section 945.6 L.G. had six months from August 14, 2015, or until February 14, 2016, to file his civil action, and he did not file it until February 18, 2016.

In opposition to the motion, Girardi submitted a declaration stating that his office had a system of calendaring important dates for each case, but that he never received the District's notice rejecting L.G.'s claim. Girardi also stated that he instructed a law clerk to ask the District about the status of the claim, but that he did not tell the clerk it was "urgent" because his office had not received notice the District had denied the claim. Girardi also stated that, after he filed the complaint, he told the law clerk it was "was no longer necessary" to check with the District on the status of the claim.

The trial court ruled that Bush's proof of service complied with Code of Civil Procedure section 1013a and that, "[b]ased on when notice of denial was served and the instant complaint was filed, [L.G.'s] complaint [was] untimely." Citing *Him v. City and County of San Francisco* (2005) 133 Cal.App.4th 437, 444-446 (*Him*), the court ruled Girardi's declaration of non-receipt of the rejection notice was "legally insufficient to raise a triable issue of fact negating the six-month statute of limitations defense." The trial court granted the motion and entered judgment in favor of the District and Olague. L.G. timely appealed.

DISCUSSION

A. *Standard of Review*

"Summary judgment is appropriate only 'where no triable issue of material fact exists and the moving party is entitled to

judgment as a matter of law.'" (*Regents of University of California v. Superior Court* (2018) 4 Cal.5th 607, 618.) "'Generally, 'the party moving for summary judgment bears an initial burden of production to make a prima facie showing of the nonexistence of any triable issue of material fact; if he carries his burden of production, he causes a shift, and the opposing party is then subjected to a burden of production of his own to make a prima facie showing of the existence of a triable issue of material fact.'" (*Santos v. Los Angeles Unified School Dist.* (2017) 17 Cal.App.5th 1065, 1073.) "When the defendant is the moving party, the defendant must show either (1) that the plaintiff cannot establish one or more elements of a cause of action, or (2) that there is a complete defense." (*Him*, *supra*, 133 Cal.App.4th at p. 441; see *Burgueno v. Regents of University of California* (2015) 243 Cal.App.4th 1052, 1057.)

We review an order granting a motion for summary judgment """"de novo, considering all the evidence set forth in the moving and opposing papers except that to which objections were made and sustained."""" (*Hampton v. County of San Diego* (2015) 62 Cal.4th 340, 347; see *Santos v. Los Angeles Unified School Dist.*, *supra*, 17 Cal.App.5th at p. 1074.) """We liberally construe the evidence in support of the party opposing summary judgment and resolve doubts concerning the evidence in favor of that party."" (*Hampton v. County of San Diego*, at p. 347.) """On review of a summary judgment, the appellant has the burden of showing error, even if he did not bear the burden in the trial court."" (*Dinslage v. City and County of San Francisco* (2016) 5 Cal.App.5th 368, 379.)

B. *The Government Claims Act*

"The Government Claims Act . . . 'is a comprehensive statutory scheme that sets forth the liabilities and immunities of

public entities and public employees for torts.'" (*Cordova v. City of Los Angeles* (2015) 61 Cal.4th 1099, 1104-1105.) "'Section 905 requires the presentation of "all claims for money or damages against local public entities" . . . . Claims for personal injury and property damage must be presented within six months after accrual; all other claims must be presented within a year. [Citation.] "[N]o suit for money or damages may be brought against a public entity on a cause of action for which a claim is required to be presented . . . until a written claim therefor has been presented to the public entity and has been acted upon . . . or has been deemed to have been rejected. . . ."'" (*DiCampli-Mintz v. County of Santa Clara* (2012) 55 Cal.4th 983, 989-990.) Under section 912.4, subdivision (a), a public entity has 45 days to "act on a claim." If the public entity fails or refuses to act on the claim within 45 days, "the claim shall be deemed to have been rejected." (§ 912.4, subd. (c).)

Once the public entity has denied the claim (or the claim has been deemed denied by operation of law), section 945.6 prescribes the statutory deadlines for commencing a civil action. (See *Mandjik v. Eden Township Hospital Dist.* (1992) 4 Cal.App.4th 1488, 1499 [section 945.6 "sets forth the statutes of limitations for filing a complaint"].) Section 945.6, subdivision (a), provides that a plaintiff must file a cause of action against a public entity within the following time limits: "(1) If written notice is given in accordance with Section 913, not later than six months after the date such notice is personally delivered or deposited in the mail. [¶] (2) If written notice is not given in accordance with Section 913, within two years from the accrual of the cause of action. . . ." (See *A.M. v. Ventura Unified School Dist.* (2016) 3 Cal.App.5th 1252, 1257 ["[w]ith certain exceptions, once a claim has been presented and rejected, a plaintiff has six months to file a lawsuit"]; *S.M. v. Los Angeles Unified School*

Dist. (2010) 184 Cal.App.4th 712, 717 ["[i]f the public entity does not give written notice that the claim has been rejected (§ 913), the plaintiff has until two years from the date her cause of action accrued to sue the entity"].)

"The deadline for filing a lawsuit against a public entity, as set out in the government claims statute, is a true statute of limitations defining the time in which, after a claim presented to the government has been rejected or deemed rejected, the plaintiff must file a complaint alleging a cause of action based on the facts set out in the denied claim." (*Shirk v. Vista Unified School Dist.* (2007) 42 Cal.4th 201, 209, superseded by statute on another ground as stated in *Rubenstein v. Doe No. 1* (2017) 3 Cal.5th 903, 914.) The "'prescribed statute of limitations for commencement of actions against the state "are mandatory and must be strictly complied with . . . ."'" (*Edgington v. County of San Diego* (1981) 118 Cal.App.3d 39, 46; see *Roberts v. County of Los Angeles* (2009) 175 Cal.App.4th 474, 481 ["six-month statute of limitations in [the] Government Claims Act is inviolate"]; *Martell v. Antelope Valley Hospital Medical Center* (1998) 67 Cal.App.4th 978, 982 [""[w]here the notice of rejection complies with [the Act's requirements] the six-month statute of limitations *cannot be extended by provisions outside the Tort Claims Act*""].)

Section 913, subdivision (a), to which section 945.6 refers, provides that "[w]ritten notice of the action . . . or the inaction that is deemed rejection . . . shall be given in the manner prescribed by Section 915.4." Section 915.4, in turn, provides that public entities must give notice of their decisions on claims either by personal delivery or by "[m]ailing the notice to the address, if any, stated in the claim or application . . . ." If the government entity gives notice by mail, section 915.2, subdivision (a), requires that the notice be "deposited in . . . a mailbox . . . in a sealed envelope, properly addressed, with postage paid," and that

the "notice shall be deemed to have been presented and received at the time of the deposit."

Section 915.2, subdivision (c), further provides: "As applied to this section, proof of mailing may be made in the manner prescribed by Section 1013a of the Code of Civil Procedure." Code of Civil Procedure section 1013a, subdivision (3), states that proof of service "may be made" by "[a]n affidavit setting forth the exact title of the document served . . . , showing (A) the name and . . . business address of the person making the service, (B) that he or she is . . . employed in[ ] the county where the mailing occurs, (C) that he or she is over the age of 18 years and not a party to the cause, (D) that he or she is readily familiar with the business' practice for collection and processing of correspondence for mailing with the United States Postal Service, (E) that the correspondence would be deposited with the United States Postal Service that same day in the ordinary course of business, (F) the name and address of the person served as shown on the envelope, and the date and place of business where the correspondence was placed for deposit in the United States Postal Service, and (G) that the envelope was sealed and placed for collection and mailing on that date following ordinary business practices."

C. *The Trial Court Properly Granted the Motion by the District and Olague for Summary Judgment*

Because L.G. filed this action more than six months after the District says it mailed the notice of rejection, but less than two years after accrual, his action is timely only if the District did not mail the notice of rejection in the manner specified by section 913. L.G. contends the trial court erred in granting the motion for summary judgment because he submitted evidence creating a factual issue regarding whether the District properly mailed the

notice of rejection. The trial court correctly ruled, however, there was no triable issue of material fact on this issue.

As stated, the applicable provisions of the Government Code provide that, if the District gives notice of rejection by mail, the District must deposit the notice in a mailbox in a properly addressed, stamped, and sealed envelope, and that proof of service "may be made in the manner prescribed by Section 1013a of the Code of Civil Procedure." (See §§ 913, 915.2, 915.4.) The District presented evidence it did just that on August 14, 2015. The proof of service stated that on August 14, 2015 Bush served the notice of rejection by placing it in a sealed envelope addressed to Girardi, "with postage thereon fully prepaid for collection and mailing." The proof of service also stated Bush was "readily familiar" with the mail collection and processing practices of the business for which he worked, that the mail "would be deposited with the United States Postal Service that same day," and that the envelope "was sealed and deposited for collection and mailing on that date following ordinary business practices." Finally, the proof of service showed that Bush was over the age of 18 and not a party to the action, and it listed the business address from where he served the notice of rejection. These statements complied with Code of Civil Procedure section 1013a and thus created a presumption of a proper mailing under section 945.6. (See *Him*, *supra*, 133 Cal.App.4th at p. 444 [proof of service that complied with section 1013a of the Code of Civil Procedure "raise[d] a reasonable inference the claims adjuster deposited the envelopes containing the claim rejection notices in the United States mail"]; *Katelaris v. County of Orange* (2001) 92 Cal.App.4th 1211, 1216 [declarations that complied with Code of

Civil Procedure section 1013a "support the finding that notice of rejection was mailed"].)[2]

L.G. argues the evidence Girardi's office did not receive the notice of rejection created "a triable issue of fact as to whether [the notice] was actually mailed." But "evidence of nonreceipt . . . is legally insufficient to raise a triable issue of fact negating the six-month statute of limitations defense." (*Him*, *supra*, 133 Cal.App.4th at p. 446.) In *Him* the plaintiffs filed their action more than six months after the city mailed notices rejecting their claims. The city filed a motion for summary judgment, asserting the statute of limitations barred the plaintiffs' complaint and submitting a proof of service of the rejection notices that the court found complied with Code of Civil Procedure section 1013a. (*Him*, at p. 444.) The plaintiffs argued their attorney's failure to receive the rejection notices raised a reasonable inference the notices "were never sent." (*Ibid.*) The court rejected the argument, explaining that the Legislature "placed upon the claimant the risk that a properly mailed notice of claim rejection is not delivered due to an error by the postal authorities" because "[t]he statute of limitations period is triggered 'from the date the notice is deposited in the mail by the public entity, and not the date it is received by the claimant or counsel.'" (*Id.* at p. 445.) The court in *Him* concluded "a claimant is required to comply with the six-month statute of limitations . . . upon proof that the notice of rejection was served even if it was not actually received by the claimant." (*Ibid.*)

L.G. contends the *Him* case "was wrongly decided" because, according to L.G., "longstanding California case law hold[s] that

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[2] L.G. does not argue Bush's proof of service did not comply with Code of Civil Procedure section 1013a.

evidence of non-receipt of a written notice is sufficient to rebut proof of mailing." None of the cases cited by L.G.,[3] however, involved section 945.6 or the Government Claims Act. L.G. also asserts that "nothing" in the Government Claims Act "suggests that the Legislature intended to deviate from the usual rules for determining whether something was or was not 'deposited in the mail.'" Nothing, that is, except section 945.6, which commences the six-month limitations period upon the mailing of the notice, section 915.2, subdivision (c), which permits the District to prove proper mailing by showing compliance with Code of Civil Procedure section 1013a, and section 915.2, subdivision (a), which begins the period at the time of mailing, not at the time of receipt. (See § 915.2, subd. (a) [the "notice shall be deemed to have been presented and received at the time of the deposit"]; *County of Los Angeles v. Superior Court* (2005) 127 Cal.App.4th 1263, 1271 ["[t]hat [plaintiff's counsel] never received the notice that the claim had been deemed denied is irrelevant"].)

Because the act of mailing in compliance with section 913 triggered the six-month limitations period, and because the District and Olague submitted proof of that fact as specified by Code of Civil Procedure section 1013a, the six-month limitations period, and not the two-year period, applied to L.G.'s claim. (See *Him, supra*, 133 Cal.App.4th at p. 445 [six-month statute of limitations applies "upon proof" by the public entity "that the notice of rejection was served"]; *Katelaris v. County of Orange*, *supra*, 92 Cal.App.4th at p. 1213 [six-month limitations period

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[3] *Preis v. American Indemnity Co.* (1990) 220 Cal.App.3d 752, 760, *Lucas v. Hesperia Golf & Country Club* (1967) 255 Cal.App.2d 241, 247, and *Jensen v. Traders & General Ins. Co.* (1956) 141 Cal.App.2d 162, 164.

applied where the public entity submitted the declaration of an assistant claims manager "[t]o establish mailing of the notice of rejection"].) As the trial court correctly ruled, Girardi's asserted failure to receive the rejection notice, without more, was "legally insufficient to raise a triable issue of fact." (*Him*, at p. 446.)

L.G. also argues "there was no evidence from anyone purporting to have personal knowledge of the fact that the rejection notice was in fact deposited in the U.S. mail or deposited in the usual place for collection of the U.S. mail at Bush's place of business." But Bush stated in his proof of service that he was the one who served the rejection notice by placing the envelope containing the rejection notice "for collection and mailing." Because Bush personally placed the envelope for collection and mailing, he had personal knowledge of that fact, and nothing in Code of Civil Procedure section 1013a requires the proof of service to include the specific words "personal knowledge." *Rincon v. Burbank Unified School Dist.* (1986) 178 Cal.App.3d 949, on which L.G. relies, is distinguishable. In that case the defendant submitted the declaration of a secretary stating she "prepared" and "mailed" the letter notifying the plaintiff of the rejection of the claim. (*Id.* at p. 956.) The court held the declaration did not comply with Code of Civil Procedure section 1013a because it did not state the secretary "deposited the notice in the United States post office . . . in a sealed envelope, properly addressed with postage paid and stating where she deposited it in the mail, and if she was the one who did so." (*Rincon*, at p. 956.) In contrast, Bush's proof of service satisfied each of the requirements of Code of Civil Procedure section 1013a.

Finally, L.G. argues Bush's April 3, 2017 declaration contradicted his August 14, 2015 proof of service because in his declaration he stated he "prepared and mailed" the rejection

notice whereas in his proof of service he stated he served the notice by "placing" the envelope "for collection and mailing." L.G. contends that, "[i]n light of this unexplained contradiction, a trier of fact could reasonably conclude that [the District and Olague] failed to prove *either* of these statements is true." But there is no contradiction. In both statements, Bush described how he provided notice in compliance with the statutory requirements. In his declaration, Bush stated he "mailed" the notice, and he incorporated by reference his proof of service, which detailed the manner in which he accomplished that act in compliance with Code of Civil Procedure section 1013a. (Cf. *Katelaris v. County of Orange*, *supra*, 92 Cal.App.4th at p. 1215 ["[t]here was nothing contradictory" in the phrases "I caused to be mailed" and "I mailed" because the second phrase "clarified the earlier one, supplying the personal knowledge previously lacking"]; *Glasser v. Glasser* (1998) 64 Cal.App.4th 1004, 1010 [a discrepancy between the date on which the clerk filed the judgment with the superior court and the date on which the judgment was served (which appeared to be three days earlier than the filing date) did not establish that the judgment "was never served"].)

DISPOSITION

The judgment is affirmed. The District and Olague are to recover their costs on appeal.

SEGAL, J.

We concur:

ZELON, Acting P. J. FEUER, J.